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AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District <u>EASTERN DIST. MICH. DETROIT COURT</u>
Name of Movant <u>MOHAMMAD ABDUL BASSIR</u>	Prisoner No. <u>44013034</u>	Case No. <u>2:09-CR-20549</u>
Place of Confinement <u>FCI ELKTON P.O. Box 10 LISBON, OH. 44432</u>		

UNITED STATES OF AMERICA

v. MOHAMMAD ABDUL BASSIR
(name under which convicted)**MOTION**

1. Name and location of court which entered the judgment of conviction under attack THEODORE LEVIN
U.S. COURTHOUSE 231 W. LAFAYETTE BLVD. DET. MI. 48226
2. Date of judgment of conviction AUGUST 2, 2011
3. Length of sentence 79 MONTHS
4. Nature of offense involved (all counts) 18 U.S.C. § 371, CONSPIRACY TO VIOLATE 18 U.S.C. § 2315, RELIEVING AND SELLING GOODS, 18 U.S.C. § 1341, MAIL FRAUD, 18 U.S.C. § 922(g) POSSESSION OF FIREARMS, 18 U.S.C. § 922(d), PROVIDING FIREARMS OR AMMUNITION, 18 U.S.C. § 931, POSSESSION OF BODY ARMOR, 18 U.S.C. § 511, TAMPERING WITH VEHICLE IDENTIFICATION NUMBERS.
5. What was your plea? (Check one)
 - (a) Not guilty ☐
 - (b) Guilty ☒
 - (c) Nolo contendere ☐

FILED

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If you entered a guilty plea to one count or indictment, and a NO guilty plea to another count or indictment, give details:NO

6. If you pleaded not guilty, what kind of trial did you have? (Check one)
 - (a) Jury ☐
 - (b) Judge only ☐
7. Did you testify at the trial?
Yes ☐ No ☐
8. Did you appeal from the judgment of conviction?
Yes ☐ No ☒

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9. If you did appeal, answer the following:

- (a) Name of court _____
- (b) Result _____
- (c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?
Yes ☐ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court _____
- (2) Nature of proceeding _____
- (3) Grounds raised _____
- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

- (5) Result _____
- (6) Date of result _____

(b) As to any second petition, application or motion give the same information:

- (1) Name of court _____
- (2) Nature of proceeding _____
- (3) Grounds raised _____

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(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

~~(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not.~~

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: LACK OF JURISDICTION

Supporting FACTS (state *briefly* without citing cases or law) IT WAS NEVER
SHOWN THAT I MOVED THE GUNS ACROSS
STATE LINES (SEE ATTACHED)

B. Ground two: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

JURISDICTIONAL CHALLENGE

WHENEVER JURISDICTION IS CHALLENGED, IT MUST BE PROVEN, FED. R. CIV. P. 12(h)(3). SEE ALSO BROWN v JOHNSON, 306 US 19 (1939); US v BENSON, 495 F.2d 481 (1946). IT CAN NEVER BE PRESUMED, HAGEN v LAVINO, 425 US 528 (1974); HARRIS v US, 149 F.3d 1304 (11th, 1998).

IT CANNOT BE CREATED OR WAIVED BY THE PARTIES, LOVE v TURLINGTON, 733 F.2d 1562, 1564 (11th, 1984); EGERTON v VALUATION, INC., 698 F.2d 1115, 1118 (11th, 1983). NOR CAN IT BE DEFAULTED, FITZGERALD v SEABOARD SYS. R.R. INC., 760 F.2d 1249-51 (11th, 1985); SALINAS v US, 547 US 188 (2006); KELLY v US, 29 F.3d 1107 (7th, 1994).

ONCE CHALLENGED, THE BURDEN IS ON THE GOVERNMENT TO PROVE JURISDICTION, KORKENON v GUARDIAN LIFE, 511 US 375, 377 (1994). "SUBJECT MATTER JURISDICTION DEPENDS ON THE FACTS AND PLEADINGS WHEN THE [INDICTMENT] WAS FILED." VERMONT v STACO, INC., 1989 US DIST LEXIS 17341 (2nd, 1989); PINKLEY, INC. v CITY OF FREDERICK, MD., 191 F.3d 394 (4th, 1999). SEE ALSO FED. R. CIV. P. 8(a).

"BECAUSE A COURT THAT LACKS SUBJECT MATTER JURISDICTION OVER THE CASE DOES NOT HAVE THE POWER TO HEAR IT, THE QUESTION OF SUBJECT MATTER JURISDICTION MAY BE RAISED AT ANY TIME."

PERCY v QUEEN, 2006 US DIST LEXIS 17120 (7th, 2006); SEE ALSO KONTRICK v RYAN, 540 US 443 (2004); US v ADESIDA, 129 F.3d 846, 850 (6th, 1997); SUNAL v LARGE, 332 US 174, 178-79 (1947); ADELPHIA RECOVERY TRUST v FPL GROUP, INC., 452 S.R. 484 (2nd, 2011).

A COURT HAS NOT ONLY THE POWER, BUT THE OBLIGATION AT ANY TIME TO DETERMINE WHETHER JURISDICTION EXISTED, PHILBROOK v GLODGETT, 421 US 707 (1975); CITY OF KENOSHA v BRUNO, 412 US 507 (1973); WYNN v AC ROCHESTER, 273 F.3d 153, 157 (2nd, 2001). IT CANNOT BE TIME BARRED, US v BURCH, 169 F.3d 666, 668 (10th, 1999). SEE ALSO PAGE v WRIGHT, 116 F.2d 449 (ca II, 1940); SCHLOMANN v MOSELEY, 457 F.2d 1223 (10th, 1972);

McLAUGHRAY v. DEMING, 186 US 49 (1902); IN RE SNOW, 120 US 274 (1887).

IF THERE IS NO JURISDICTION, THEN THE COURTS ORDERS ARE VOID AND MUST BE REVERSED, STEEL CO. v. CITIZENS FOR A BETTER ENVIRONMENT, 523 US 94 (1998); INSURANCE CORP. OF IRELAND, Ltd., 456 US 702 (1982); WILLEY v. COASTAL CORP., 503 US 139 (1992). "FOR THIS REASON, A COURT HAS NO... LICENSE TO DECLINE TO CONSIDER WHETHER THE STATUTE UNDER WHICH THE DEFENDANT HAS BEEN CHARGED LACKS CONSTITUTIONAL APPLICATION TO [HIS] CONDUCT." BOND v. US, 131 S. Ct. 2355 (2011).

WITH THIS ESTABLISHED, MOVANT BRINGS SUCH A CHALLENGE.

LACK OF JURISDICTION

MOVANT, MOHAMMAD ABDEL BASSIR, WAS CHARGED WITH A VIOLATION OF 18 U.S.C. § 922(9), FELON IN POSSESSION OF A FIREARM, 18 U.S.C. § 922(K) KNOWING POSSESSION OF A FIREARM WITH AN OBLITERATED SERIAL NUMBER. AND SENTENCED TO 79 MONTHS. THE GOVERNMENT BASED FEDERAL JURISDICTION ON THE ORIGIN OF THE MANUFACTURER. BECAUSE THE JURISDICTION IS BASED ON PRIOR MOVEMENT OF GOODS, IT IS IN CONFLICT WITH SETTLED SUPREME COURT CASE LAW.

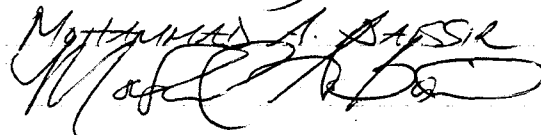
IN US v LOPEZ, 514 US 549 (1995), THE SUPREME COURT STRUCK DOWN A STATUTE OUTLAWING FIREARM POSSESSION IN A SCHOOL ZONE. THE COURT FOUND THAT THIS LAW INTRUDED ON THE POLICE POWER OF THE STATE. SEE ALSO SCREWS v US, 325 US 91, 109 (1945); BRECHT v ABRAHAMSON, 507 US 619 (1993).

US v ALDERMAN, 131 S. Ct. 700 (2011) REITERATED THAT PRIOR MOVEMENT OF GOODS ACROSS STATE LINES, JUSTICE THOMAS BELIEVED THAT HIS WAS PROPERLY HANDLED BY HIS STATE.

BECAUSE EVERY FEDERAL STATUTE MUST HAVE A JURISDICTIONAL STATEMENT THAT LIMITS ITS REACH, US v MORRISON, 529 US 598 (2000), THE JURISDICTIONAL STATEMENT HERE IS INVALID. AS THE PROSECUTION ADMITTED, THERE ARE NO GUNS MADE IN MICHIGAN, THUS POTENTIALLY MAKING EVERY GUN CASE A FEDERAL CASE. WHEN THE FEDERAL GOVERNMENT CRIMINALIZES CONDUCT ALREADY ILLEGAL AT THE STATE LEVEL, IT EFFECTS A CHANGE IN THE BALANCE OF POWER BETWEEN THE STATE AND FEDERAL GOVERNMENT. LOPEZ. FOR THIS REASON, THERE MUST BE A PRESUMPTION AGAINST FEDERAL PRE-EMPTION OF STATE CASES, PENNY v NELSON, 350 US 497 (1956); BOWLING v SLAYTON, 344 F. SUPP 650 (WD Va, 1972).

MOVANT MUST INSIST THAT HIS PROSECUTION WAS UNCONSTITUTIONAL AS THE FEDERAL GOVERNMENT LACKED JURISDICTION ON HIS CASE.

THEREFORE, AS ANY JUDGEMENT ISSUED WITHOUT JURISDICTION IS VOID, MOVANTS SENTENCE MUST BE VACATED, AND HE MUST BE IMMEDIATELY RELEASED.

RESPECTFULLY SUBMITTED,
MOHAMMED A. BASSIR


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D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: JURISDICTION. IT CAN BE RAISED AT ANY TIME. NO REASON MUST BE GIVEN.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

(c) At trial _____

(d) At sentencing _____

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(e) On appeal _____
_____(f) In any post-conviction proceeding _____
_____(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?
 Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
 Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

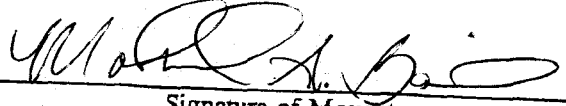
(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
 Yes ☐ No ☒

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

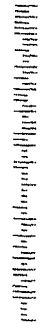
 Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

 (date)



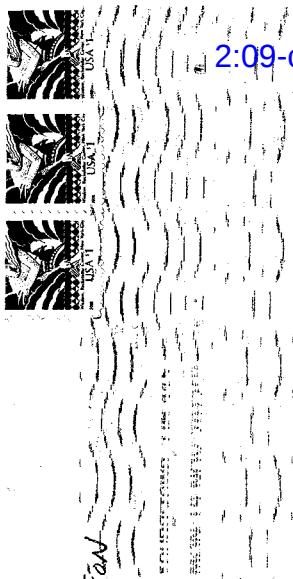
 Signature of Movant



4401

F.C.I. ELKTON
P.O. BOX 10
ELKTON, OH 44432

INSTITUTIONAL
ELKTON



44013-039
E MI Us Ct Sixth Dist
241 W. Lafayette BLVD
Detroit, MI 48226
United States

LEGAL
MAIL

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U.S. DISTRICT COURT



FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 29
LIBBON, OHIO 44432
RECEIVED NOV 19 2012

DATE
THE ENCLOSED LETTER WAS PROCESSED THROUGH THE MAILING PROCESS FOR FORWARDING TO THE WRITER HAS BEEN OPENED FOR REVIEW IF THE WRITER RAISES A QUESTION OR PROBLEM OVER WITH FACILITY HAS JURISDICTION TO ANSWER TO THE MATERIAL - FURTHER CLARIFICATION IF THE WRITER ENCLOSES CORRESPONDENCE FOR FORWARDING TO ADDRESS PLEASE PRINT THE ENCLATURE TO THE ABOVE ADDRESS.

